

Service Date: June 20, 1988

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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In the Matter of the Application)
of PACIFICORP dba PACIFIC POWER &)
LIGHT COMPANY for an Order authorizing)
it to (1) guaranty up to \$15,000,000)
principal amount of debt, together) UTILITY DIVISION
with interest thereon, on behalf of) DOCKET NO. 88.5.11
its PACIFICORP K PLUS EMPLOYEE SAVINGS) DEFAULT ORDER No. 5345
AND STOCK OWNERSHIP PLAN AND TRUST,)
and (2) enter into such agreements)
or arrangements with financial)
institutions necessary to effect the)
guaranty.)
_____)

On May 19, 1988, PacifiCorp dba Pacific Power & Light Company (Pacific), a corporation organized and existing under and by virtue of the laws of the State of Maine and qualified to transact business in Montana, filed with the Montana Public Service Commission its verified application, pursuant to Sections 69-3-501 through 69-3-507, MCA, requesting an order authorizing Pacific to (1) guaranty up to \$15,000,000 principal amount of debt, together with interest thereon, on behalf of the PacifiCorp K Plus Employee Savings and Stock Ownership Plan and Trust and (2) enter into such agreements or arrangements with financial institutions necessary to effect the guaranty.

The application is supported by exhibits and data in accordance with the rules and regulations of the Commission governing the authorization of the issuance of securities by electric and gas utility companies operating within Montana.

For detailed information with respect to the general character of Pacific's business and the territories served by it, reference is made to its annual reports on file with the Commission.

The application sets forth Counsel who will pass upon the legality of the proposed guaranty, the other regulatory authorizations required, and the propriety of the proposed guaranty.

At a regular open session of the Montana Public Service Commission held in its offices at 2701 Prospect Avenue, Helena, Montana, on June 13, 1988, there came before the Commission for final action the matters and things in Docket No. 88.5.11, and the Commission, having fully considered the application and all the data and records pertaining to it on file with the Commission and being fully advised in the premises, makes the following:

FINDINGS

1. Pacific is a corporation organized and existing under and by virtue of the laws of the State of Maine and is qualified to transact business in the State of Montana.

2. Pacific is operating as a public utility as defined in Section 69-3-101, MCA, and is engaged in furnishing electric service in Montana.

3. The Commission has jurisdiction over the subject matter of the application under Section 69-3-102, MCA.

4. Notice of the application was published as a part of the Commission's regular weekly agenda.

5. Pacific proposes to guaranty up to \$15,000,000 principal amount of debt, together with interest thereon, on behalf of the PacifiCorp K Plus Employee Savings and Stock Ownership Plan and Trust (Plan). The proceeds from the guaranteed debt will be used by the Plan to purchase PacifiCorp common stock on the open market to provide for a leveraged employee stock ownership plan (Leveraged ESOP) for certain union employees of Pacific as part of the overall compensation package contained in the collective bargaining agreement for the employees' bargaining unit.

6. Pacific proposes to enter into such agreements or arrangements with financial institutions necessary to effect the guaranty. One or more guarantees (collectively not to exceed \$15,000,000 of debt) will be entered into during 1988 and 1989 and run for a period of not more than three years from the respective dates the guarantees are issued. The issuance date of each guaranty will coincide with the date the Plan is required to cover certain union employees as specified in the related collective bargaining agreement.

7. The proposed guaranty represents that Pacific will guaranty full payment and complete performance when due (whether at stated maturity, by reason of acceleration, or otherwise) of all indebtedness, obligations, covenants and duties of, and all terms and conditions to be observed by, the Plan's Trustee for the benefit of the institution or institutions lending funds to the Plan Trust (Lender).

8. The interest rate on the guaranteed debt is expected to be based upon the following options: (a) Prime Rate option will be adjusted from time to time to reflect a change in the Lender's Prime Lending Rate and will be paid quarterly; (b) Certificate of Deposit loans will mature and be payable at selected intervals of 30, 60, 90 and 180 day periods. It is expected that Certificate of Deposit loans will be reserve adjusted and include a credit quality spread of no more than $7/8$'s of 1 percent; (c) LIBOR loans will mature and be payable at selected intervals of one, two, three and six month periods. It is expected that the LIBOR loans will be reserve adjusted and include a credit quality spread of no more than $5/8$'s of 1 percent.

Under Internal Revenue Code Section 133, one half of the interest income received by a lending institution on a loan to a qualified leveraged employee stock ownership program may be excluded from taxable income. This benefit is passed through to the borrower in the form of a lower borrowing rate.

9. The guarantees will be entered into during 1988 and 1989 and run for a period of not more than three years from the respective dates the guarantees are issued. The issuance date of each guaranty will coincide with the date the Plan is required to cover certain union employees of Pacific as specified in the related collective bargaining agreement.

10. Pacific believes that the Leveraged ESOP will allow it to provide employee compensation at a lower cost than would be possible by other methods. This Leveraged ESOP also encourages increased employee ownership of PacifiCorp common stock.

11. Effective January 1, 1983, Pacific implemented an Employees' Stock Ownership Plan and Trust for qualified non-union employees of Pacific. Effective January 1, 1985, Pacific implemented its Bargaining Employees' Stock Ownership Plan and Trust for those qualified employees of Pacific covered by collective bargaining agreements providing for participation in that plan. Employer contributions under these plans were discontinued for years after 1986 as a result of a change in tax laws. These plans, along with similar employee savings plans at Pacific's subsidiary companies, have been consolidated for administrative efficiency into the PacificCorp K Plus Employee Savings and Stock Ownership Plan effective January 1, 1988.

12. Collective bargaining employees will be covered under the Leveraged ESOP established within the Plan pursuant to authorization by the Board of Directors of Pacific on October 14, 1987 in order to provide eligible employees of Pacific's bargaining units with additional benefits of having Pacific's stock held for them through a qualified retirement plan. The Leveraged ESOP is designed to meet the requirements and applicable regulations of Sections 409 and 4975(e)(7) and related provisions of the Internal Revenue Code.

13. Pacific will provide for coverage of collective bargaining employees through a Trust administered by a Trustee for the Leveraged ESOP, who will then borrow up to \$15,000,000 in one or more separate borrowings (Loans) from one or more qualifying financial institutions. Pacific will guaranty payment of principal and interest on the Loans. The proceeds of the Loans will be used

by the Trustee to acquire PacifiCorp common stock in the open market in an amount equal to the net proceeds of the Loans.

14. The expected results of the Loans are as follows:

Estimated Results of the Loans

Gross Proceeds	\$15,000,000
Less: Brokerage Commissions to Purchase Stock	<u>22,200*</u>
Net Proceeds Available to Purchase Stock	<u>\$14,977,800</u>

*Based upon May 6, 1988 closing stock price of \$33.75/share and a brokerage commission fee of \$.05/share. This cost will be borne by the Leveraged ESOP.

Leveraged ESOP Expenses Allocable to Pacific

Regulatory Agency fees:	
Federal Energy Regulatory Commission	\$ 500
State Commissions	500
SEC Registration fee	5,000
Bank Loan fees	75,000
Pacific's Counsel fees	20,000
Consultant's fees	10,000
Lender's Counsel fees	50,000
Trustee's Legal fees	10,000
Accountant's fees	3,500
Printing fees	10,000
Miscellaneous fees	<u>3,500</u>
Total Expenses	<u>\$188,000</u>

15. The interest and principal on the Loans will be paid with cash received by the Trustee from Pacific. Four separate sources of cash flow will be paid to the Trust. These sources are:

(a) dividends on the shares of PacifiCorp common stock acquired by the Trust with the proceeds of the Loans while the shares are held in a Trust suspense account before being allocated to participants' accounts (Unallocated Shares). PacifiCorp currently pays a quarterly dividend on the common stock of \$0.66 which translates to an annual dividend of \$2.64. To the extent that PacifiCorp continues to pay a dividend on its common stock, and the Trust owns shares of PacifiCorp common stock that have not been allocated to employees' accounts, the dividend received will be available to service the guaranteed debt;

(b) an amount equal to a fixed percent of each participant's qualifying income earned during the applicable period. Pacific proposes to reduce the amount of increase in cash wages paid to its union employees by fixed percentages. As such, Pacific has taken the position that wage increases granted in the current round of negotiations be reduced by 1 percent each year over three years of the contract. Pacific would then contribute this amount to the Trust. The fixed percentages as proposed are 1 percent in the first year, 2 percent in the second year, and 3 percent in the third year;

(c) an amount equal to the tax deduction received by Pacific on its dividend payments to the Trust. The Internal Revenue Code permits Pacific to treat as a tax deduction for federal income tax purposes cash dividends on its common stock in two circumstances: first, cash dividends paid to the Trust on Unallocated Shares where dividends are used to service the Loans, and second, cash dividends on shares of common stock held in the Trust and allocated to participants' accounts, but only if the dividends are passed through to the participant by the Trustee in the form of current cash distributions; and

(d) after receipt of the required IRS ruling, an amount equal to Company contributions matching a portion of the employees' pre-tax contributions pursuant to salary reduction agreements permitted under Internal Revenue Code Section 401(k). Pacific currently has an employee savings plan qualified under Internal Revenue Code Section 401(k). The employee savings plan gives employees the opportunity to defer pre-tax income until retirement or other termination of employment. It acts as a supplemental retirement program. Companies are permitted under the Internal Revenue Code to make deductible contributions that match all or part of the pre-tax contributions elected by the employees. Pacific has proposed that during 1988, it will match contributions

at a rate of .5 times the amount of pre-tax contributions elected by the employee up to a pre-tax contribution level of 6 percent of the employee's compensation. Therefore, as proposed, Pacific would contribute an amount up to 3 percent of an employee's compensation as its matching contribution associated with the employee's elective pre-tax contribution for 1988. The matching contribution may change in later years. All matching contributions will be used to purchase PacifiCorp common stock.

16. The Unallocated Shares will be held by the Lenders as collateral for the repayment of the Loans. As cash from the described sources is received by the Trust and interest and principal payments are made, the lien of the Lenders will be released and the common stock will be allocated to participants in an amount equal to the debt retired.

17. The issuance of an order authorizing the proposed financing does not constitute agency determination/approval of any issuance-related ratemaking issues which issues are expressly reserved until the appropriate proceeding.

CONCLUSIONS

The proposed guaranty to which the application relates will be for lawful objects within the corporate purposes of Pacific. The method of financing is proper.

The application should be approved.

ORDER

IT IS THEREFORE ORDERED by the Commission that:

1. The application of PacifiCorp dba Pacific Power & Light Company, filed on May 19, 1988, for authority to guaranty up to \$15,000,000 of debt, together with interest thereon, on behalf of its PACIFICORP K PLUS EMPLOYEE SAVINGS AND STOCK OWNERSHIP PLAN AND TRUST (Plan), pursuant to Sections 69-3-501 through 69-3-507, MCA, the proceeds from the guaranteed debt to be used by the Plan to purchase PacifiCorp common stock on the open market to provide for a leveraged employee stock ownership plan (Leveraged ESOP) for certain union employees of Pacific as part of the overall compensation package contained in the collective bargaining agreement for the employees' bargaining unit is approved.

2. The application of PacifiCorp dba Pacific Power & Light Company to enter into such agreements or arrangements with the financial institutions as may be necessary to effect the guaranty and pursuant to which Pacific would assume obligations as guarantor, with respect to full payment and complete performance when due (whether at stated maturity, by reason of acceleration, or otherwise) of all indebtedness, obligations, covenants and duties of, and all terms and conditions to be observed by, the Plan's

Trustee for the benefit of the institution or institutions lending funds to the Plan Trust (Lender) is approved.

3. PacifiCorp dba Pacific Power & Light Company shall file the following as they become available:

- a. The "Report of Securities Issued" required by 18 CFR 34.10.
- b. Verified copies of any agreement entered into in connection with the guaranty pursuant to this order.
- c. A verified statement setting forth in reasonable detail the disposition of the proceeds of the borrowing made pursuant to this order.

4. Issuance of this order does not constitute acceptance of PacifiCorp dba Pacific Power & Light Company's exhibits or other material accompanying the application for any purpose other than the issuance of this order.

5. Approval of the transaction authorized shall not be construed as precedent to prejudice any future action of this Commission.

6. Section 69-3-507, MCA, provides that neither the issuance of securities by PacifiCorp dba Pacific Power & Light Company pursuant to the provisions of this order, nor any other act or deed done or performed in connection with the issuance, shall be

construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed, or guaranteed.

7. This order shall be effective upon execution.

DONE IN OPEN SESSION at Helena, Montana, this 13th day of June, 1988, by a 5 to 0 vote.